No. 83-382

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In the Supreme Court of the United States

OCTOBER TERM, 1983

BRUCE WARREN RUSH, PETITIONER

v.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a federal employee whose salary is garnished pursuant to a facially valid state garnishment writ is entitled to reimbursement from the government even though it is clear that the state court that issued the writ had both subject matter and personal jurisdiction.

2. Whether the federal government or the courts below violated petitioner's right to procedural due process by giving full faith and credit to a state court judgment, where the state court had jurisdiction and the judgment was not procured by fraud.

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OPINIONS BELOW

The memorandum opinions of the court of appeals (Pet. App. 3a-7a) and the district court (Pet. App. 9a-18a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on April 26, 1983 (Pet. App. 1a). A timely petition for rehearing was denied on June 23, 1983 (Pet. App. 19a). The petition for a writ of certiorari was filed on September 7, 1983. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner, allegedly a Virginia domiciliary, sued his wife for divorce in the Okaloosa County Circuit Court of the State of Florida. After proceedings in which petitioner appeared and testified, a judgment of divorce was entered

and petitioner was ordered to pay child support. When he failed to comply with that order, the Florida court issued a writ of garnishment, which was honored under 42 U.S.C. (Supp. V) 659 by petitioner's employer, the Agency for International Development (AID). Pet. App. 3a, 10a-11a.

Acting pro se, petitioner then brought suit in the United States District Court for the District of Columbia, seeking, among other things, the return of previously garnished monies and an injunction ordering AID not to honor the writ (Pet. App. 9a, 13a). Petitioner's "confusing allegations" (*id.* at 9a-10a) were summarized by the district court as follows (*id.* at 12a-13a):

> Plaintiff contends that the Florida court judgment is constitutionally invalid because findings of fact were signed by a judge who had not heard the testimony in the case and because unconstitutional conditions were imposed on his right to appeal the judgment through the Florida court system. From this premise he argues that AID has acted unconstitutionally in recognizing the Florida court garnishment order which was valid on its face and properly served because it rests on a constitutionally defective judgment. Alternatively, he suggests that 42 U.S.C. § 659 is unconstitutional as applied because it has had the effect of extending the *in personam* jurisdiction of the Florida courts beyond the limits authorized by the due process clause. He seeks to enjoin defendants from making any payments to his former wife or the Florida courts and to have his former wife and child made parties to this action and ordered to show cause why they should not be required to return the money they have received. Plaintiff also seeks to have representatives of the Florida courts joined in this action so that they may be required to show cause why plaintiff's appeal from the divorce judgment was dismissed and why the garnishment order should not be cancelled.

The district court dismissed petitioner's complaint. The court held (Pet. App. 14a-15a) that petitioner's constitutional challenge to 42 U.S.C. (Supp. V) 659 was "wholly without merit." Noting (Pet. App. 14a-15a) that Section 659 was "simply a waiver of sovereign immunity for the limited purpose of subjecting the United States to state court process to enforce an order for support or alimony payments," the court stated (Pet. App. 15a) that "[t]he validity of such a waiver is not in doubt." The court also rejected (*id.* at 15a-16a) petitioner's claim that Section 659 impermissibly extended the Florida court's jurisdiction, observing (Pet. App. 16a) that petitioner was not "deprived of any constitutional right because his employer is more readily subjected to process than other garnishees." Finally, the court held (*id.* at 16a-18a) that the alleged defects in the Florida judgment of divorce and support provided no basis for attacking that judgment in district court because the Florida court had in personam and subject matter jurisdiction and its judgment had not been procured by fraud.

The court of appeals affirmed in a memorandum opinion. The court first held (Pet. App. 4a-6a) that petitioner was barred by 42 U.S.C. (Supp. V) 659(f) from seeking reimbursement from AID or its administrator for previously garnished monies. The court explained (Pet. App. 5a-6a):

> [T]he liability of the United States, its agencies, and its officers for withholding or redirecting payments under the statute is strictly limited if the garnishment is made pursuant to "legal process regular on its face" and in accordance with the statute and its implementing regulations. 42 U.S.C. § 659(f) (Supp. IV 1980). In the present case, Rush has not claimed that the garnishment order was facially invalid or that AID violated statutory requirements or applicable regulations. Thus, at least to the extent that Rush seeks reimbursement of

funds previously garnished, he is barred by the statute from litigating those claims against AID or its administrator.

The court of appeals then concluded (Pet. App. 6a-8a) that the district court had properly dismissed petitioner's claims for injunctive relief, which were based upon alleged defects in the Florida proceedings. The court of appeals stated (*id.* at 6a-7a) that, under 28 U.S.C. 1738, "federal courts, absent circumstances not present here, must give full faith and credit to state court judgments." It added (Pet. App. 7a) that "the alleged constitutional defects in the Florida judgments that might be remediable in federal court are wholly without merit * * *."

ARGUMENT

The decision of the court of appeals is correct and does not warrant review by this Court.

1. Insofar as petitioner seeks reimbursement from the government or its officers, his claim is barred by 42 U.S.C. (Supp. V) 659(f). Under 42 U.S.C. (Supp. V) 659(a), which provides a limited waiver of sovereign immunity, federal salaries are now "subject, in like manner and to the same extent as if the United States * * * were a private person, to legal process brought for the enforcement" of "legal obligations to provide child support or make alimony payments." However, 42 U.S.C. (Supp. V) 659(f) protects the government and its officers from liability for making payments "pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section." As the court of appeals pointed out (Pet. App. 6a), petitioner did not claim either that "the garnishment order was facially invalid or that AID violated statutory requirements or applicable regulations."

To be sure, petitioner did contend (Pet. App. 4a) that the garnishment writ should not have been honored because of alleged defects in the underlying judgment, including lack of personal jurisdiction over him on the part of the Florida court. Petitioner correctly points out (Pet. 9-12) that in *Morton* v. *United States*, 708 F.2d 680, 689 (Fed. Cir. 1983), in which we have petitioned for a writ of certiorari,[1] the court held that a federal employee whose salary is garnished may obtain reimbursement from the government if the underlying judgment was issued by a court without personal jurisdiction and the government had notice of a "substantial claim of jurisdictional irregularity." The *Morton* court noted (*id.* at 684-685) that 42 U.S.C. (Supp. V) 659(f) protects the government from liability only when it honors "legal process regular on its face." Because "legal process" is defined by 42 U.S.C. (Supp. V) 662(e)(1) to require issuance by "a court of competent jurisdiction," the Federal Circuit in *Morton* held (708 F.2d at 686) that a court without personal jurisdiction does not satisfy this requirement. The *Morton* court therefore concluded (*id.* at 689) that a garnishment writ issued by such a court is not "legal process" and that the immunity provision does not apply when the government makes payment pursuant to such a writ. Finding that the state court that issued the alimony and child support judgment in that case lacked personal jurisdiction over the employee, the Federal Circuit held that the government was liable to the employee for the amounts paid pursuant to the writ (*id.* at 686-690).

The Federal Circuit's reasoning in *Morton* is plainly at odds with that of the court of appeals in the present case, which held that the immunity provision applied despite

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[1]We are sending a copy of our petition in *Morton* to counsel for petitioner.

petitioner's claim that the Florida courts lacked in personam jurisdiction. For reasons we will explain (see pages 6-7, *infra*), petitioner's claim of lack of in personam jurisdiction is frivolous. But in holding that the immunity provision applies in this case, the court below did not rely upon an evaluation of the merits of petitioner's claim.[2] Accordingly, it seems likely that the court below would have rejected the claim for reimbursement in *Morton*, even assuming that the underlying judgment in that case was issued by a court without in personam jurisdiction.

On the other hand, there is no reason to believe that the Federal Circuit would have decided the present case differently, and for that reason we do not urge that the Court grant certiorari here. The Federal Circuit would not have found the government liable in the present case unless the government had received notice of a "substantial," or perhaps a "nonfrivolous," challenge to the state court's jurisdiction (see 708 F.2d at 689 & n.12). Here, petitioner has asserted that the state court lacked jurisdiction even though he himself initiated suit in that court. However, it is settled (Restatement (Second) of Conflict of Law § 34 (1971)) that:

> [a] state has power to exercise judicial jurisdiction over an individual who brings an action in the state in that action and, to the extent that the local law of the state so provides at the time of the bringing of the action, in any action which the defendant may bring against him by way of counterclaim or independent cross-action.

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[2] In discussing petitioner's claims for injunctive relief, the court of appeals observed (Pet. App. 7a) that "the alleged constitutional defects in the Florida judgments that might be remediable in federal court are wholly without merit * * *." But the court did not rely upon this conclusion when it earlier rejected petitioner's claim for reimbursement (*id.* at 4a-6a).

See also *Adam* v. *Saenger*, 303 U.S. 59 (1938). Florida statutes provide that in a proceeding for dissolution of marriage, "the court may grant alimony to either party" (Fla. Stat. Ann. § 61.08(1) (West Supp. 1983)) and may order either or both parents to pay child support (Fla. Stat. Ann. § 61.13(1) (West Supp. 1983)). Thus, the Florida court's jurisdiction over petitioner with respect to the alimony and support order seems clear.[3]

Finally, petitioner's claim (Pet. 14-15, 23) that the Florida court lacked jurisdiction over his federal salary is also wrong. As the district court held (Pet. App. 15a-16a), "[t]here is no question that the United States is 'present' in the State of Florida and therefore subject to a garnishment order issued by the courts of that state once the bar of sovereign immunmity has been eliminated." See Restatement (Second) of Conflict of Law § 68 (1971). It is true, as petitioner notes (Pet. 14-15), that mere presence of the garnishee in the state of garnishment is no longer sufficient to satisfy due process. *Shaffer* v. *Heitner*, 433 U.S. 186 (1977). But here, as previously noted, the Florida court also had personal jurisdiction over petitioner. See Restatement (Second) of Judgments § 8(1)(b) (1982) ("A court may exercise jurisdiction to seize property whose situs is in the state * * * if * * * [t]he action is to enforce a judgment against the owner of the property * * *.").

In sum, petitioner's claim that the Florida court lacked personal jurisdiction over him seems frivolous, and it is therefore most unlikely that petitioner could prevail even under the standards announced by the Federal Circuit in

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[3]Petitioner's suggestion (Pet. 22-23) that the Florida court lost personal jurisdiction over him is incorrect. *Michigan Trust Co.* v. *Ferry*, 228 U.S. 346 (1913); Restatement (Second) Conflict of Laws § 26 (1971) ("[i]f a state obtains jurisdiction over a party to an action, the jurisdiction continues throughout all subsequent proceedings which arise out of the original cause of action.").

Morton. Accordingly, there is no reason for this Court to review the denial of petitioner's claim for reimbursement. While we see no need to hold this case pending disposition of our petition in *Morton*, we have no objection to that procedure.

2. The lower courts were also correct in rejecting petitioner's claims for injunctive relief. Insofar as those claims are based on alleged consitutional violations by federal officers, they are not barred by sovereign immunity. *Dugan* v. *Rank*, 372 U.S. 609, 621-622 (1963); *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 690-691 (1949). However, those claims are wholly without merit.

Petitioner attacks the underlying Florida judgment on numerous grounds. But federal courts must give state court judgments full faith and credit absent a substantial jurisdictional defect or extrinsic fraud. See 28 U.S.C. 1738; Restatement (Second) of Conflict of Laws §§ 103-106, 115 & comment d (1971). As previously discussed, the Florida court's personal jurisdiction is clear, and its competency to grant a divorce and order alimony and child support payments has not been questioned (see Pet. App. 17a). While petitioner alleges that his marriage was fraudulent, he has not claimed that the Florida judgment was fraudulently obtained (see *ibid.*). Thus, as the court of appeals observed (*ibid.*), petitioner's "claims that the procedures afforded by the Florida court were constitutionally defective should have been pursued through the Florida courts and, if necessary, to the United States Supreme Court."

Petitioner also asserts (Pet. 20) that AID denied him procedural due process by not "[i]nterpleading [his] salary into the US District Court of Alexandria, Va." He further asserts (Pet. 19) that he was improperly denied "a judicial hearing in Virginia or the District of Columbia" and that the only proper way in which the Florida alimony and

support judgment could have been enforced was through an action on that judgment in his state of residence (Pet. 20-21). These arguments all assume that the government was free to dishonor the Florida court's writ of garnishment, which was based on the underlying judgment. Since that judgment was entitled to full faith and credit, and since, as previously discussed, the garnishment writ was regular on its face, these arguments must fail.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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Solicitor General

DECEMBER 1983

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